Status of the Bay Delta Conservation Plan (BDCP) and Key Concerns with the DEIS[1]

(1) EPA has publicly said that the current exports and diversion facilities are not working for either the fish or the exporters. We support the concept of "a" new conveyance facility IF it is (a) the right size, (b) the right place, and utilizes (c) the right operational parameters.
(2) Most scientific evaluations of the many stressors affecting aquatic resources in the Delta list two factors as critical to a stable ecosystem (a) addressing aquatic habitat loss and modification and (b) addressing the flow regime. The BDCP emphasizes the first factor (habitat) by proposing significant tidal marsh restoration. In return, the BDCP anticipates maintaining or increasing diversions of freshwater water out of the estuary.

(1) **The 60-day extension to the comment period somewhat circumvented EPA's call for DOI to withdraw, revise, and re-circulate the DEIS:** Comments are now due JUN 13th rather than APR 14th. The action agencies have acknowledged that they have unresolved disagreements with DWR/USBR that prevent a complete evaluation of project impacts, but they have agreed to allow the NEPA process to proceed so that missing project definitions and analyses can be folded into the FEIS. However, this is inconsistent with the spirit of NEPA as a public disclosure process. Given that all parties anticipate significant changes in the project and the analysis after the DEIS, we wanted the DEIS to be withdrawn, revised, and withdrawn, revised, and re-circulated for public review.
(2) **Operational Scenarios are too Similar:** The DEIS does not provide a "reasonable range of alternatives" as required by NEPA because the operational scenarios are too similar and indistinct. This narrow range of operational alternatives does not contain an alternative that protects aquatic life ***and*** provides water supply reliability (a.k.a. the "co-equal goals"). Furthermore, some of the alternatives are given more attention than others (i.e., Alts. 1 and 4 were the subject of multiple modeling runs while other alternatives did not), and this unbalanced analysis is not appropriate.
(3) **Operational Scenarios are not Realistic:** Climate change results in substantial diminishment of snowpack and reservoir storage, however, the analysis assumes that reservoirs will be operated as they are today to meet future demand. The analysis predicts draining three large reservoirs to "dead pool" conditions in 10% of future year, however, as evidenced by the response to the drought emergency, DWR/USBR will do almost anything to avoid draining the reservoirs (including suspension of water quality standards. The DEIS must contain realistic operational scenarios so we can work together to create a permittable project that achieves the stated goals of the BDCP.
(4) **Potential Adverse Effects:** The DEIS assumes that climate change rather than future project operations will be the cause of many or most adverse environmental impacts, and seems to assume that water supplies for exporters will be equal or greater than today despite a decreasing snowpack in the Sierra Nevada and reservoir storage.
(5) **Restored Tidal Marsh does not Substitute for Freshwater Flows:** The DEIS envisions both restored tidal marsh and increased freshwater diversions out of the Delta. Independent scientific review[2] has questioned both the feasibility of tidal marsh restoration and the assumption that restored habitat can mitigate for current and future freshwater diversions and flow impairments. The State Water Board is updating its Water Quality Control Plan for the Bay Delta, and the BDCP should adhere to the mandates of the State Board, not the other way around.[3]
(6) **Further Degradation of Impaired Waters:** All of the BDCP alternatives would cause significant declines in Delta water quality, including chronic salinity intrusion. Delta waters are already listed as impaired, and the construction and operation of the BDCP could exacerbate these impairments.
(7) **Methylmercury:** EPA supports the restoration of wetlands in the Delta, but the wetlands need to be designed to prevent the formation and circulation of methylmercury. Methylmercury is a neurotoxin that bioaccumulates in the foodchain and adversely affects humans and wildlife. [4]

[1] Major unresolved issues such as financing or governance are relevant to the ESA HCP process, but are not directly EPA issues.
[2] http://mavensnotebook.com/wp-content/uploads/2013/09/FINAL-BDCP-REVIEW-for-TNC-and-AR-Sept-2013.pdf
[3] EPA's Action Plan http://www2.epa.gov/sites/production/files/documents/actionplan.pdf
[4] Pilot Study of Seasonal and Permanent Wetlands http://ca.water.usgs.gov/mercury/yoloBypass.html